

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-323
Administrative Law Judge Division

RESOLUTION

RESOLUTION ALJ-323. Resolves the Appeal of Pacific Gas and Electric Company from Citation ALJ-274 2014-11-001 Issued by the Safety and Enforcement Division.

SUMMARY

This Resolution dismisses the appeal of Pacific Gas and Electric Company from Citation ALJ-274 2014-11-001, issued by the Safety and Enforcement Division of the California Public Utilities Commission.

BACKGROUND

Citation ALJ-274 2014-11-001 (or Citation), stems from a March 3, 2014, incident in the City of Carmel-by-the-Sea in which a leak from a gas distribution line caused an explosion that damaged a nearby unoccupied home.¹ The Citation alleged violations of two federal pipeline safety regulations on the grounds that Pacific Gas and Electric Company (PG&E) failed to properly equip the crew working on the line and that the crew failed to make the surrounding area safe after discovering the leak.² As part of the Citation, after determining that there was a continuing violation, the California Public Utilities Commission's (or Commission) Safety and Enforcement Division (SED) assessed a penalty of \$10,850,000.³

¹ Incident Investigation Report at 1.

² The Citation alleged violations of the requirement of 49 C.F.R. § 192.615(a)(7) to "establish written procedures" for "[m]aking safe any actual or potential hazard to life or property," and the requirement of Subpart N of 49 C.F.R. § 192 to establish "a written qualification program" to ensure employees can "react to abnormal operating conditions." Citation at 1-2.

³ *Id.* at 1. The Commission also initiated an Order Instituting Investigation (I.14-11-008) to address, in part, alleged recordkeeping violations related to the incident in Carmel.

PG&E timely appealed the Citation. Among other things, PG&E's appeal argued that the two regulations identified in the Citation address only "written procedures" and training requirements, rather than the conduct of individual crews – the focus of the Citation – and thus the Citation did not set forth a valid violation of law.⁴ In addition, PG&E argued that the violations could not be deemed "continuing" under California law, and that the penalty was excessive and disproportionate to the alleged violation.⁵

At the time of this appeal, PG&E was awaiting a decision from the California Court of Appeals in a proceeding wherein it challenged a Commission decision related to the same definition of a continuing violation. On June 16, 2015, the California Court of Appeals ruled in favor of the Commission's exercise of authority, and upheld the Commission's standard for determining a "continuing violation" and excessive fines.⁶ On June 26, 2015, PG&E notified the Commission that it wished to voluntarily dismiss its appeal.

RESOLUTION OF THE APPEAL

No party opposes PG&E's request to dismiss its appeal. PG&E's request to dismiss its appeal should be granted and the penalty assessed in Citation ALJ-274 2014-11-001 by SED should be affirmed.⁷ PG&E should be required to comply with the notification and all other provisions of Resolution ALJ-274 and, on payment of the full amount of the fine, the Citation should become final.

SAFETY

Pursuant to Pub. Util. Code § 451 each public utility in California must "[f]urnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment and facilities, ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public." Citation ALJ-274 2014-11-001, and our affirmation thereof, furthers these objectives.

CONCLUSION

⁴ PG&E Notice of Appeal, Attachment to Notice of Appeal at 5, 7-8.

⁵ *Id.* at 6-7 and 8-10.

⁶ See *Pacific Gas and Electric Co. v. Public Utilities Commission*, 188 Cal. Rptr. 3d 374 (Cal. Ct. App. 2015).

⁷ No party has requested and we do not herein address whether or not PG&E should be required to pay interest on the original penalty assessed.

In light of the facts set forth above, PG&E's request to dismiss its appeal should be granted, and Citation ALJ-274 2014-11-001, issued by the SED of the California Public Utilities Commission, and the penalty assessed therein should be affirmed.

COMMENTS

The draft resolution of the Administrative Law Judge Division in this matter was mailed in accordance with Section 311 of the Public Utilities Code and Rule 14.5 of the Commission's Rules of Practice and Procedure. No comments were received.

ASSIGNMENT OF PROCEEDING

Darwin E. Farrar is the assigned Administrative Law Judge for this Citation appeal.

FINDINGS

1. The California Public Utilities Commission's SED issued Citation ALJ-274 2014-11-001 on November 20, 2014.
2. Citation ALJ-274 2014-11-001 stems from a March 3, 2014, incident in the City of Carmel-by-the-Sea in which a leak from a gas distribution line caused an explosion that damaged a nearby unoccupied home.
3. On December 1, 2014, PG&E filed an appeal of Citation ALJ-274 2014-11-001.
4. The PG&E appeal argued that the violations alleged could not be deemed "continuing" under California law, and that the penalty assessed was excessive and disproportionate to the alleged violation.
5. On June 26, 2015, PG&E notified the California Public Utilities Commission that it wished to dismiss its appeal.
6. No party opposes PG&E's request to dismiss its appeal.

CONCLUSIONS OF LAW

1. In issuing Citation ALJ-274 2014-11-001, the California Public Utilities Commission's SED found that there was a continuing violation.
2. Citation ALJ-274 2014-11-001 assessed a penalty against the PG&E of \$10,850,000.
3. PG&E timely appealed Citation ALJ-274 2014-11-001.

4. On June 16, 2015, the California Court of Appeals affirmed the Commission's exercise of authority, related to the standard for determining a "continuing violation" and excessive fines.

THEREFORE, IT IS ORDERED that:

1. Pacific Gas and Electric Company's request to dismiss its appeal of Citation ALJ-274 2014-11-001 is granted.
2. Citation ALJ-274 2014-11-001, issued by the Safety and Enforcement Division of the California Public Utilities Commission is affirmed.
3. The penalty assessed in Citation ALJ-274 2014-11-001, issued by the Safety and Enforcement Division of the California Public Utilities Commission is affirmed.
4. Pacific Gas and Electric Company shall comply with the notification and all other provisions of Resolution ALJ-274.
5. On payment of the full amount of the fine Citation ALJ-274 2014-11-001 shall become final.
6. Pacific Gas and Electric Company shall submit payment of the aforementioned fine to the California Public Utilities Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check, payable to the California Public Utilities Commission within 30 days of the effective date of this Resolution.
7. Pacific Gas and Electric Company shall include the citation number and shall include a completed Citation Payment Form.
8. Upon payment, the fine will be deposited in the State Treasury to the credit of the State General Fund.
9. Pacific Gas and Electric Company will be subject to a late payment penalty of 10 percent per year, compounded daily and to be assessed beginning the calendar day following the above payment-due date.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

TIMOTHY J. SULLIVAN
Executive Director

SERVICE LIST

Appeal of Pacific Gas and Electric Company
from Citation #ALJ-274 2014-11-001

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(End of Service List)